

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 12867, of Mr. & Mrs. Henry P. Staley, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 5102.41 to use the first floor of the subject premises as an auto repair garage, no body or fender work, and towing service in a C-2-A District at the premises 927 Missouri Avenue, N.W. (Square 2986, Lot 860).

HEARING DATE: February 14, 1979  
DECISION DATE: March 7, 1979

FINDINGS OF FACT:

1. The subject site is located on the north side of Missouri Avenue, between 9th Street and Georgia Avenue, N.W. and is known as 927 Missouri Avenue. It is in a C-2-A District.
2. The subject site is triangular shaped and is approximately 10,186 square feet in area. The site is improved with a two-bay garage building and is otherwise paved with asphalt.
3. A chain link fence bounds the site on its north and east sides. The garage building is separated from the nearest residentially developed property by a twenty-five foot wide grass strip on its east boundary.
4. To the north of the site is a parking lot, to the east is an apartment house, to the south, across Missouri Avenue, there is a public park and to the west, there is a business machine company and parking lot.
5. The operation of the proposed garage, Mr. Ernesto Aleotti is a contract purchaser of the subject property.
6. Mr. Aleotti intends to continue to use a portion of the subject site as an auto sales lot and to use the subject building for auto repair work. No body or fender work will be done. He intends to operate towing services incidental to his auto sales and repair.

7. Mr. Aleotti testified that the proposed use will specialize in the repair of foreign autos, that most of his customers work or live within a one mile radius of the site. All equipment will be kept in the subject building. The applicant works by himself on an appointment only basis.

8. Vehicular access to the site is by two driveway curb cuts on Missouri Avenue. Approximately fifty cars can be parked on the site.

9. Automobile sales is permitted as a matter-of-right in the C-2-A District. Auto repairs not incidental to sales is allowed only by special exception.

10. The Office of Planning and Development, by report dated February 9, 1979, recommended that the application be granted conditionally on the grounds that the proposed use will not affect adversely the use of neighboring property. It conditioned its approval to require that lighting used to illuminate the lot be arranged so that all direct rays be confined to the surface of the parking lot, that the Board receive a positive report from the Department of Transportation and that the grass strip to the east be maintained. The Board concurs.

11. The application was referred to the Department of Transportation for its review and report. No report was received.

12. Advisory Neighborhood Commission 4B made no recommendation on the application.

13. An abutting property owner did not oppose the proposed use. He testified to his concern as to screening and maintenance of the subject grass strip which separates the subject lot from the residential area to the east. A fence which he had built has constantly been knocked down by cars parked in that area of the site by a previous owner of the previous gas station. The owner also wanted the grass strip kept clean of debris.

#### CONCLUSIONS OF LAW:

Based on the record, the Board concludes that, with a condition for screening hereinafter imposed, the applicant has substantially complied with the requirements of Paragraph 5102.41 as set forth in Paragraph 5101.41.


CONCLUSIONS OF LAW (CONT'D)

The Board further concludes that the application can be granted as in harmony with the general purpose and intent of the Zoning Regulations and will not tend to affect adversely the use of neighboring property. Accordingly, it is ORDERED that the application is GRANTED SUBJECT to the CONDITION that the site shall be subject to the screening plan identified as Exhibit 20 of the record and attached hereto.

VOTE: 5-0 (Charles R. Norris, Ruby B. McZier, Chloethiel Woodard Smith, William F. McIntosh and Leonard L. McCants to GRANT).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: \_\_\_\_\_

  
STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: 27 MAR 1979

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 12867 of Mr. and Mrs. Henry P. Staley, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 5102.41 to use the first floor of the subject premises as an auto repair garage, no body or fender work, and towing service in a C-2-A District at the premises 927 Missouri Avenue, N.W., (Square 2986, Lot 860).

HEARING DATE: February 14, 1979

DECISION DATE: March 7, 1979

DISPOSITION: The Board GRANTED the application by a vote of 5-0 (Charles R. Norris, Ruby B. McZier, Leonard L. McCants, William F. McIntosh and Chloethiel Woodard Smith to grant) subject to the condition that the site shall be subject to the screening plan identified as Exhibit No. 20 of the record.

FINAL DATE OF ORDER: March 27, 1979

O R D E R

FINDINGS OF FACT:

1. A Motion for Reconsideration of the Board's GRANT of the subject application was filed on March 12, 1980 on behalf of Whitaker Brothers Business Machines, an adjacent property owner to the subject premises.

2. The movant contends that the Superior Court of the District of Columbia in Civil Action No. 8233-79 RP, entered its judgement in favor of the movant by judicially establishing a prescriptive easement as a driveway over the easternmost part of the subject Lot 860 and that the applicant by erecting a fence and gate which partially encroaches upon the easement interferes with the movant's driveway. The movant further contends that the Board granted the application on the grounds that the special exception would not affect adversely the use of neighboring property whereas it does.

3. The movant received official notice from the Office of the Zoning Secretariat of the public hearing of February 14, 1979. There is no evidence in the record of this case that the movant participated in the hearing on this matter.

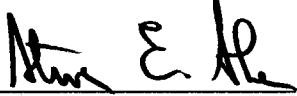
4. Section 5.41 of the Supplemental Rules of Practice and Procedure before the Board of Zoning Adjustment requires that a Motion for Reconsideration be filed by a party within ten days of the final date of the Order.

CONCLUSIONS OF LAW:

Based on the record the Board concludes that the Motion for Reconsideration was untimely filed. The Board further concludes that even if the Motion had been timely filed the Board has no jurisdiction over the matter. The redress, if any, is within the jurisdiction of the Superior Court of the District of Columbia. Accordingly, it is ORDERED that the Motion for Reconsideration is DENIED.

VOTE: 3-0 (William F. McIntosh, Charles R. Norris and Leonard L. McCants to deny, Connie Fortune and Walter B. Lewis not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:   
STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: 2 JUN 1980

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 12867 of Mr. and Mrs. Henry P. Staley, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 5102.41 to use the first floor of the subject premises as an auto repair garage, no body or fender work, and towing service in a C-2-A District at the premises 927 Missouri Avenue, N.W., (Square 2986, Lot 860).

HEARING DATE: February 14, 1979  
DECISION DATE: March 7, 1979

DISPOSITION: The Board granted the application by a vote of 5-0 (Charles R. Norris, Ruby B. McZier, Leonard L. McCants, William F. McIntosh and Chloethiel Woodard Smith to grant) subject to the condition that the site shall be subject to the screening plan identified as Exhibit No. 20 of the record.

FINAL DATE OF THE ORDER: March 27, 1979

FINDINGS OF FACT:

1. By letter dated March 29, 1979, the applicant reconsideration of the conditions for screening imposed Order dated March 27, 1979. The request was time accordance with Section 5.41 of the Supplement and Procedure before the Board of Zoning A-

2. The original screening condition plant seven white pines, having 6 feet on the existing twenty-five foot of the existing building. The trees were centers starting twenty feet back from Avenue and were to be ten feet from +1

3. The applicant's request the screening plan as imposed part of his property, did not immediately, and would not to his property. the trees as directed stockade for

"will not tend to affect adversely the use of neighboring property in accordance with said zoning regulations and maps." The Board concludes that with the condition as substituted herein, the use of neighboring property will be adequately protected.

It is therefore ORDERED that the condition contained in the Order dated March 27, 1979 be deleted, and that the following conditions be added:

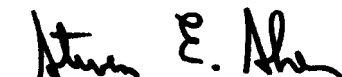
- (1) The applicant shall erect a six foot high stockade fence along the east side of the property abutting the residential district.
- (2) The area within twenty-five feet of the east property line shall not be used for repair garage purposes, but may be used for any use permitted as a matter of right in the C-2-A District.

In all other respect, the Order dated March 27, 1979, including findings of fact, conclusions of law and opinion remains in full force and effect.

VOTE: 4-0 (William F. McIntosh, Charles R. Norris, Chloethiel Woodard Smith and Leonard L. McCants to impose the substitute condition).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:



STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER:

4 MAY 1979

4. The Board considered the request for reconsideration at its public meeting held on April 4, 1979. On a motion made by William F. McIntosh, seconded by Charles R. Norris, by a vote of 4-0 (William F. McIntosh, Charles R. Norris, Chloethiel Woodard Smith and Leonard L. McCants to reconsider) the Board determined to reconsider the condition.

5. The application is being considered under Paragraph 5102.41 of the Zoning Regulations. That paragraph requires the use to meet "the conditions for a gasoline service station set forth in Paragraph 5101.41." Sub-paragraph 5101.411 requires that:

"The station shall not be located within 25 feet of a residence district unless separated therefrom by a street or alley."

6. The boundary line between the subject site and an R-5-A District is the east lot line of the subject site. The property is therefore located within 25 feet of a residence district, and is not separated from that district by a street or alley.

7. As found by the Board in its Order dated March 27, 1979:

"The garage building is separated from the nearest residentially developed property by a twenty-five foot wide grass strip on its east boundary."

8. In other cases filed under the same paragraph, the Board has consistently interpreted the Regulations so that a gas station would be in compliance with Sub-paragraph 5101.411 if a twenty-five foot wide strip adjacent to the residential district were planted and landscaped and not devoted to gas station use.

9. The applicant would comply with the requirement of Sub-paragraph 5101.411 if the twenty-five foot wide area between the building and the east side lot line is not devoted to repair garage use.

10. The screening and protection of neighboring property can be accomplished as well by the stockade fence suggested by the applicant as the original plan directed by the Board.

#### CONCLUSIONS OF LAW AND OPINION

The Board concludes that the applicant presented a timely request for reconsideration, and that the request demonstrated the suitability and appropriateness of substituting for the Board's original screening condition, a stockade fence along the east property line. The Board notes that the original condition was imposed to meet the requirement in Sub-section 8207.2 of the Zoning Regulations that the Board find that a special exception